



February 9, 1999

Mr. Juan J. Cruz
Escamilla & Poneck, Inc.
Attorneys at Law
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR99-0385

Dear Mr. Cruz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122110.

The San Antonio Independent School District (the "school district"), which you represent, received a request for "all documentation you have in reference to the allegations brought against" a particular school district employee. You contend that the submitted documents are excepted from disclosure pursuant to sections 552.101 and 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

The school district conducted an investigation into the allegations about which the requestor is seeking information. Based on the reasoning in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), you contend that the identities of the witnesses who gave statements in the investigation are excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common-law right to privacy. The common-law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court found the common-law right to privacy applicable to portions of an investigation file relating to a workplace sexual harassment incident. Here, we do not find the allegations and investigation to be highly intimate and embarrassing. Therefore, we conclude that the common-law right to privacy and the reasoning in *Morales v. Ellen* do not apply to the submitted documents.

You also contend that the submitted documents are excepted from disclosure under section 552.114 of the Government Code. In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. In this instance, however, you have submitted to this office documents that identify students.

"Education records" under FERPA are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986). The submitted documents are education records under FERPA. Prior to releasing the documents to the requestor, FERPA requires the school district to delete information from the documents to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). We have marked the information in these documents that appears to identify students. This identifying information is deemed confidential under FERPA and must be withheld from disclosure.

Finally, we note that section 261.201 of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report

Fam. Code § 261.201(a). The submitted documents include a "Suspected Child Abuse/Neglect Reporting Form." This form is confidential pursuant to section 261.201(a)(1) of the Family Code. Therefore, the school district must withhold this form from disclosure pursuant to section 552.101 of the Government Code as information deemed confidential by

law. With the exception of this form and the information we have marked pursuant to FERPA, the submitted documents must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Karen Hattaway", written over a horizontal line.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 122110

Enclosures: Marked documents

cc: Ms. Virginia L. Davis
San Antonio Federation of Teachers
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San Antonio, Texas 78212-4306
(w/o enclosures)